IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr. Appeal No. 310/2007.

Date of Decision :9th May, 2008.

Om Raj. ….Appellant.

Versus:

State of H.P. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for Reporting?[1] Yes.

For the appellant: Ms. Ritta Goswami, Advocate. .

For Respondent. Mr.Vivek Thakur, Addl. Advocate General
with Ms. Shubh Mahajan, Dy. Advocate General.

Sanjay Karol, J.

The present appeal arises out of the judgment dated 18th May, 2007 passed by Additional Sessions Judge, Fast Track Court, Kangra at Dharamsala, H.P. in S.C/S.T. No. 39-D/VII/06/2/2007 titled as State of H.P. Vs. Om Raj convicting the accused for having committed an offence under Section 307 I.P.C. and sentencing him to undergo simple imprisonment for a period of seven years and fine of Rs.10,000/- and in default thereof to further undergo imprisonment of one year.

The brief case of the prosecution is that on 11th August, 2006 Parshotam Lal (PW-1) had taken his animals for grazing from his house at village Duli, post office Kutharna, Tehsil and Police Station, Shahpur District Kangra, H.P. When

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

he reached near the house of the accused, Reena Devi (PW-2) niece of the accused and grand daughter of PW-1 called him into the courtyard of the house. Parshotam Lal sat along side PW-2 and kept his 'Darati' (sickle) (Ext.P-1) besides him. Thereafter the accused came from the first floor of the house and proclaimed that PW-1 had stolen his money. He gave blows with sickle and 'Naddi' (long smoking pipe made of iron used with hookah) (Ext.P-2) as a result of which PW-1 sustained injuries on his body. On hearing the cries, Vikrama Devi (PW-3) and Roshan Lal (PW-7) reached at the spot. PW-1 was taken to the hospital for treatment where he was medically examined by Dr.Sanjay Dhiman (PW-14) and the incident was reported to the Police telephonically by PW-3. The police was also informed by the hospital authorities. The information received by the police was reduced into writing vide Nakal rapat No.10 (Ext.PW-8/A) and Nakal rapat No.27 (Ext.PW-8/B). The statement of the injured under Section 154 Cr.P.C. (Ext.PW-11/A) was recorded in the hospital by the police. Based on the same rukka (Ext.PW-10/A) was sent to the Police Station and consequently F.I.R.No.116/2006 dated 11th August, 2006 (Ext.PW-10/B) under Section 307 I.P.C. was registered with Police Station, Shahapur, District Kangra, H.P. The medical records of the injured (Ext.PW-14/A, Ext.P-4 , Ext.PW-5/A and Ext.PW-6/A) were taken on record by the Police. Upon further investigation the weapon of offence i.e. 'Darati' (Ext.P-1), 'Naddi' (Ext.P-2)

and shirt (Ext.P-3), the blood stained clothes of the injured were recovered by the Police vide recovery memo (Ext.PW-4/A). The statement of the witnesses were recorded.

With the completion of the investigation, challan was presented in the Court for trial. The accused was charged for an offence under Section 307 I.P.C. to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined thirteen witnesses and the statement of the accused under Section 313 Cr.P.C. was recorded. Importantly, most of the circumstances put to the accused stands admitted by him and no evidence in defence has been led by him.

Appreciating the material on record in its entirety, the court below convicted the accused guilty for the charged offence and accordingly sentenced him to undergo imprisonment.

It has been argued by the learned counsel appearing for the appellant that the accused has not committed the charged offence and without prejudice, in any event the committed offence, at best falls under Section 326 I.P.C. and not 307 I.P.C. as has been held by the court below. The learned counsel has also argued that the sentence is on the higher side and needs to be reduced.

Per contra, the learned Additional Advocate General has supported the judgment for the reasons set out therein.

I have heard learned counsel for the parties and also perused the record.

The prosecution witnesses, namely, Parshotam Lal (PW-1) and Reena Devi (PW-2) have proved that on 11th August, 2006, PW-1 was on his way to the jungle when he was called by PW-2 to sit in the court yard of the house owned by the accused and PW-1. PW-1 sat along with PW-2 and kept the 'Darati', which he had been carrying on the side. From the upper storey of the house the accused proclaimed that PW-1 had stolen his money. He came and started searching PW-1 and without any provocation picked up 'Darati (Ext.P-1) and started giving blows with it due to which PW-1 suffered injuries on his head, forehead and hands. Accused also hit PW-1 with 'Naddi'. Smt. Reena Devi (PW-2) raised an alarm when Roshan Lal (PW-7) and Smt. Vikrama Devi (PW-3) arrived at the spot and found PW-1 lying on the floor and blood oozing out from the injuries. Seeing them accused ran away from the spot.

PW-1 has deposed that the injuries were suffered on his head, forehead and hands and had he not been rescued by PW-7, PW-2 and PW-3, he would have been killed by the accused. There is no cross-examination on this point.

The version of these witnesses duly stands corroborated by PW-2 and PW-7 who have clearly deposed that on hearing the cries they reached the place of occurrence of the incident and saw PW-1 lying on the floor and blood oozing out from the injuries on his body. They also saw the accused armed with 'Darati' (Ext.P-1) and 'Naddi'(Ext.P-2).

All the police officials, namely, Sh.Pravesh Kumar (PW-8), Sh. Mohinder Singh (PW-8), Sh.Pritam Singh (PW-10), Sh. Shiv Kanya (PW-11), Sh. Onkar Singh (PW-12) and Sandeep Kumar (PW-13) proved that the information received by them on telephone which was recorded as rapat (Ext.PW-8/A) and Ext.PW-8/B) and rukka (Ext.PW-10/A) was received and F.I.R. (Ext.PW-10/B) was recorded. Sh.Onkar Singh (PW-12), Investigating Officer proved that he had recorded the statement of the injured (Ext.PW1/A) and also carried out investigation in the matter.

Smt. Leela Devi (PW-4) has proved that the weapon of offence i.e. 'Darati' (Ext.P-1), 'Naddi' (Ext.P-2) and the blood stained shirt of the injured (Ext.P-3) was recovered by the police vide recovery memo (Ext.PW-4/A). Dr. R.K.Abbey (PW-5), Dr.Sunil Kumar (PW-6) and Dr. Sanjay Dhiman (PW-14) have proved the fact that they medically examined the injured PW-1 and had prepared the medical record Ext.PW-14/A and Ext.PW-10/A is the application on the

basis of which the opinion was given . PW-14 has clearly deposed that PW-1 suffered the following injuries:

> "Injury No.1: Multiple incised wound present on the scalp, forehead, lip, and right hand. On the scalp three incised wound measuring 4 CMX 3 CM (2) 3 CM X 2 CM, (3) 4 CM x 3 CM on the left side of partial region. Muscle deep freshly bleeding. Margins regular.
>
> (b) One incised wound on the left occipital region of scalp 8 CM x XM in size. Nussle deep. Freshly bleeding.
>
> © One incised wound on the occipital region 7 CM x 3 CM freshly bleeding.
>
> Injury No.2 on Forehead: On four incised wound. Measuring (1) 5 CM x 1 CM, (2) 4 CMX 1 CM, (3) 4 CM x 1 CM, (4) 5 CM x 1 CM present on the forehead. Margins regular. Freshly bleeding.
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> Injury No.3: An incised wound presentation the upper lip. 5 CM x 1 CM, Freshly bleeding. Muscles deep. Margin regular.
>
> Injury No.4: Two incised wound presentation the right hand. (a) One incised wound between middle and ring finger 6 CM x 1 CM in size. Freshly bleeding.
>
> Injury No.5: An incised wound present on the right ring finger 4 CM x 1 CM freshly bleeding. Bone creptus present"

According to him, PW-1 being 75 years of age received multiple injuries which could have been inflicted with 'Darati' (Ext.P-1). The same were dangerous to life and had the patient not been provided with medical aid, he could have died.

In his statement recorded under Section 313 Cr.P.C. the accused has admitted most of the circumstances put to him. He admitted that on 11th August, 2006, PW-1 had taken his animals for grazing to the jungle. PW-1 was sitting in the court yard of his house and from the first floor of the house he had proclaimed that PW-1 had stolen his money which fact was denied by him. He admitted that PW-1 was carrying 'darati' (Ext.P-1) with himself. But, however, when he started searching PW-1 he was hit back by PW-1 with the same' as a result of which he also suffered injuries. Even PW-1 sustained injuries when he raised his hand. He also admitted that an alarm was raised and Parshotam Lal was rescued from his clutches by Roshan Lal (PW-7), Reena Devi (PW-2) and Vikrama Devi (PW-3). The fact that the police was informed and that medical treatment was given to the injured also stands admitted by him. Even the recovery of the weapon of offence has been admitted by him.

It has come on record that without provocation accused picked up the 'Darati' (Ext.P-1) lying on the floor and started giving blows with the same on the head, forehead and hands of PW-1. Blows were also given with 'Naddi' (Ext.P-2) . PW-2 is the niece of the accused. She witnessed the occurrence of the entire incident. She has corroborated the version of PW-1 in totality. The parties are related to each other. It is not the case of the accused that witnesses have

falsely implicated him due to animosity or family jealous or any litigation.

The injured was an old man of 75 years of age and the accused a young man of robust health was of 32 years of age. He had levelled allegation of theft against PW-1. According to his own admission he started searching PW-1 for the money alleged to have been stolen. No witness has said that PW-1 had entered the house. The allegation therefore was apparently false. It stands proved that injuries sustained by PW-1 were grievous in nature.

The accused has not led any evidence to establish that he sustained injuries on his body. It is not the case of the accused that some altercation took place between the two and in the heat of the moment the incident took place. The testimonies of the prosecution witnesses are clear, cogent and reliable. In spite of cross-examination by the accused, nothing has come out which would point towards the innocence of the accused. All the witnesses in one voice have deposed the entire sequence of the events pertaining to the incident and have unambiguously proved the guilt of the accused in the commission of the charged offence.

The version of PW-1 stands corroborated by PW-2, according to whom the accused picked up the 'darati' and started giving beatings on the head, forehead and hands. PW-2 has categorically stated that had PW-1 not been rescued; the accused would have killed him. It is not the case where

the accused at the spur of moment, after heated arguments had given a ‘blow with a ‘darati’ to PW-1. Multiple blows were repeatedly given by the accused to an old and helpless man without any provocation. The complainant was all by himself and had to suffer the physical onslaught. Therefore, from the facts and circumstances of the present case, the intention of the accused is evident. The injury was sufficient in the ordinary course of nature to cause death.

In my view all the essential ingredients to constitute an offence under Section 307 I.P.C. duly stand proved by the prosecution without any doubt. The accused was conscious of the health and the age of the injured. He gave repeated blows with the ‘Darati’ and ‘Naddi’ and, therefore was aware of the fact that the same would be fatal.

Learned counsel for the appellant has argued that the doctor has opined that the nasal bone had broken and there were no internal injuries, therefore, the case falls under Section 326 I.P.C. In *Hari Mohan Mandal Vs. State of Jharkhan* (2004) 12 Supreme Court Cases 220 , the court has held as under:

> “To justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such *intention may also be deduced from other circumstances, and may even, in some cases, be*

> *ascertained without any reference at all to actual wounds.* The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. *Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. Hence, the circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury".*
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> (Emphasis Supplied)

In State of M.P. Vs. Saleem alias Chamaru and another (2005) 5 Supreme Court Cases 554, the court has held as under:

> "15 In Sarju Prasad V. State of Bihar it was observed in para-6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307."

In *Vasant Vithu Jadhav Vs. State of Maharashtra*, (2004) 9 Supreme Court Cases 31 and In *State of Maharashtra Vs. Balram Bama Patil and others* (1983) 2 Supreme Court Cases 28, the Apex court has categorically held that simply cause the injuries inflicted on the victim were in the nature of simple in hurt that fact by itself would not be enough to acquit the accused of the charged under Section 307 I.P.C.

In *Girija Shankar Vs. State of U.*P. (2004) 3 Supreme Court Cases 793, the court has held that in order to see as to whether the essential ingredients constituting an offence under Section 307 I.P.C. have been proved or not, the Court has to see as to whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

In *Parsuram Pandey and others Vs. State of Bihar*, 2005 Supreme Court Cases (Cri.) 113, the Court has held as under:

> "To constitute an offence under Section 307 two ingredients of the offence must be present:
> (a) an intention of or knowledge relating to commission of murder; and
> (b) the doing of an act towards it.
> For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to brig about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence "of attempt to murder". Intent which is a state of mind cannot be proved by precise direct evidence; as a fact it can only be detected or inferred from other factors*. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place."*
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> (Emphasis Supplied)

Keeping in view the principles of law laid down by the Apex Court and the attended facts and circumstances of the present case, it cannot be said that the accused has been wrongly convicted under Section 307 I.P.C. As has been noticed herein-above the essential ingredients required to constitute an offence under Section 307 I.P.C. duly stand

proved by the prosecution witnesses beyond reasonable doubt. The submission made by the learned counsel for the appellant, therefore needs to be rejected.

On the quantum of sentence the Apex Court has held as under: In *Siddarama and others Vs. State of Karnataka* (2006) 10 Supreme Court Cases 673, has held as under:

> "10. Undue sympathy to impose inadequate sentence would do more harm to the justice system, to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Peumal V. State of T.N.
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> 11. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving t a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. The judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and

> sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.
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> 12. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in event times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

The facts of the instant case are similar to the facts noticed by the Apex Court in the said judgment and the sentence was reduced from imprisonment for life to five years.

It is to be noted that the accused is the real nephew of the injured. There is no history of long outstanding animosity between them. The accused is young and has a family totally dependant upon him. It is his first offence. Keeping in view the totality of the circumstances, in my view,

the interest of justice would be met if the sentence is reduced to five years. Accordingly the sentence awarded by the trial Court is substituted to be five years instead of seven years. The conviction and the rest of the sentence is maintained as it is. The appeal is partly allowed in the aforesaid terms.

(Sanjay Karol),
Judge.

May 9, 2008(R)